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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,286	02/20/2002	Peter R. Jepson	06160-1P67	6625

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BAYER MATERIAL SCIENCE LLC
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EXAMINER

ZHENG, LOIS L

ART UNIT	PAPER NUMBER
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1742

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/079,286

Applicant(s)

JEPSON ET AL.

Examiner

Lois Zheng

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 25 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Claims 1, 3 and 5 are currently under examination.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaluk et al. US Patent Application Publication 2002/0072475 A1(Michaluk).

The teachings of Michaluk are discussed in paragraph 5 of the previous Non-Final Office Action mailed 26 May 2005. The rejection grounds are maintained for the same reason as stated in paragraph 5 of the previous Non-Final Office Action.

Response to Arguments

4. Applicant's arguments filed 25 November 2005 have been fully considered but they are not persuasive.

In the remarks, applicant argues that Michaluk does not teach a uniform distribution of {100} and {111} crystallographic orientations across the surface of any plane of the article and across the thickness of the article.

The examiner does not find applicant's argument persuasive since Michaluk clearly teaches the presence of both {100} and {111} crystallographic orientations(page 2 paragraph 0019) and uniform texture in the sputtering component(page 2 paragraph 0017). Therefore, the texture distribution variation in the sputtering component of Michaluk is inherently very small, which reads on the claimed less than 30% variation

both across the surface of any plane of the article and across the thickness of the article.

5. The Declaration under 37 CFR 1.132 filed 25 November 2005 is insufficient to overcome the rejection of claims 1, 3 and 5 based upon Michaluk applied under 35 U.S.

C. 103(a) as set forth in the last Office action because:

a. Applicant has not demonstrated how Plate 475 and Plate 286 are produced(i.e. exact manufacturing conditions, such as annealing temperatures and hot or cold working conditions were not disclosed).

b. Applicant stated in the Declaration that Plate 286 is produced according to paragraphs 0026, 0028 and 0029 of the instant specification. However, paragraphs 0026, 0028 and 0029 of the instant specification disclose wide ranges of operating conditions. Therefore, Plate 286 represents only one embodiment of a tantalum metal plate of the instant invention. It is well settled that evidence of superior properties in one embodiment is insufficient to establish the nonobviousness of an invention containing other wide range of embodiments. In re Greenfield, 571 F.2d 1185, 1189, 197 USPQ 227, 230 (CCPA 1978). See MPEP 2144.08.

c. Applicant alleges that Plate 475 produced according to Michaluk is not homogenous in comparison to uniform texture of Plate 286 according to the instant claims. However, the instant claim 1 recites a distribution of {100} and {111} crystallographic orientations that varies by less than 30% across the surface of any plane of the metal plate and across any thickness of the metal

plate, which implies that a certain amount of variation in the distribution of {100} and {111} crystallographic orientations is allowed. Applicant has not quantified the non-homogenous texture of Plate 475 and the uniform texture of Plate 286 in a manner from which the examiner may link the {100} and {111} crystallographic orientations distribution variation in Plate 475 and Plate 286 to the {100} and {111} crystallographic orientations distribution variation ranges as claimed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lois Zheng whose telephone number is (571) 272-1248. The examiner can normally be reached on 8:30am - 5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LLZ

ROY KING
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700